



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2012-0446; FRL-9703-9]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Determination of Clean Data for the 1987 PM₁₀ Standard for the Ogden Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Ogden City nonattainment area in Utah is currently attaining the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM₁₀) based on certified, quality-assured ambient air monitoring data for the years 2009 through 2011. The State of Utah submitted a letter dated March 30, 2000, requesting EPA to make a clean data determination for the nonattainment area of Ogden City. Based on our proposed determination that the Ogden City nonattainment area is currently attaining the PM₁₀ NAAQS, EPA is also proposing to determine that Utah's obligation to make submissions to meet certain Clean Air Act (CAA) requirements related to attainment of the NAAQS is not applicable for as long as the Ogden City nonattainment area continues to attain the NAAQS. This action is being taken under the CAA.

DATES: Comments must be received on or before [insert date 30 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2012-0446, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: freeman.crystal@epa.gov.
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Carl, Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2012-0446.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through www.regulations.gov your e-mail address will be automatically captured and included as part of

the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Crystal Freeman, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6602, freeman.crystal@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information

II. Background

A. PM₁₀ NAAQS

B. Designation and Classification of Ogden City PM₁₀ Nonattainment Area

C. How Does EPA Make Attainment Determinations?

III. EPA's Analysis

A. What is the Ogden City Nonattainment Area Monitoring Network?

B. Do the Ogden City Nonattainment Area Monitors Meet Minimum Federal Ambient Air Quality Monitoring Requirements?

C. What Does the Air Quality Data Show for the Ogden City Nonattainment Area?

IV. EPA's Clean Data Policy and the Applicability of the Clean Air Act Planning Requirements to the Ogden City Nonattainment Area

V. EPA's Proposed Action

VI. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials AQS mean or refer to EPA's Air Quality System database.

(iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

- (iv) The initials NAAQS mean or refer to National Ambient Air Quality Standard.
- (v) The initials NSR mean or refer to new source review.
- (vi) The initials PM_{2.5} mean or refer to particulate matter with an aerodynamic diameter equal to or less than 2.5 micrometers (fine particulate matter).
- (vii) The initials PM₁₀ mean or refer to particulate matter with an aerodynamic diameter equal to or less than 10 micrometers (coarse particulate matter).
- (viii) The initials RACM mean or refer to reasonably available control measures.
- (ix) The initials RFP mean or refer to reasonable further progress.
- (x) The initials SIP mean or refer to State Implementation Plan.
- (xi) The initials SLAMS mean or refer to state and local air monitoring stations.
- (xii) The words State or Utah mean the State of Utah, unless the context indicates otherwise.
- (xiii) The initials UDEQ mean or refer to Utah Department of Environmental Quality.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. PM₁₀ NAAQS

EPA sets the NAAQS for certain ambient air pollutants at levels required to protect public health and welfare. Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, or PM₁₀, is one of these ambient air pollutants for which EPA has established health-based standards. On July 1, 1987, EPA promulgated two primary standards for PM₁₀: a 24-hour standard of 150 micrograms per cubic meter (µg/m³); and, an annual PM₁₀

standard of 50 $\mu\text{g}/\text{m}^3$. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards. See 52 FR 24634 (July 1, 1987).

Effective December 18, 2006, EPA revoked the annual PM_{10} standard but retained the 24-hour PM_{10} standard. See 71 FR 61144 (October 17, 2006). An area attains the 24-hour PM_{10} standard when the expected number of days per calendar year with a 24-hour concentration in excess of the standard (referred to herein as an “exceedance”), as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.¹ See 40 CFR 50.6 and 40 CFR part 50, appendix K.

B. Designation and Classification of Ogden City PM_{10} Nonattainment Area

The Ogden City nonattainment area was designated nonattainment for PM_{10} and classified as moderate under section 107(d)(3) of the CAA, on July 28, 1995. See 60 FR 38726 (July 28, 1995) and 40 CFR Part 81.345 (Ogden Area Weber County (part) City of Ogden). The Ogden City designation became effective on September 26, 1995.

C. How Does EPA Make Attainment Determinations?

Generally, EPA determines whether an area’s air quality is meeting the PM_{10} NAAQS based on complete,² quality-assured, and certified data gathered at established state and local air monitoring stations (SLAMS) in the nonattainment area, and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by State, local, or Tribal agencies in compliance with EPA monitoring requirements must be submitted to AQS. These monitoring agencies certify annually that these data are accurate to the best of their knowledge.

¹ An exceedance is defined as a daily value that is above the level of the 24-hour standard, 150 $\mu\text{g}/\text{m}^3$, after rounding to the nearest 10 $\mu\text{g}/\text{m}^3$ (i.e., values ending in five or greater are to be rounded up). Thus, a recorded value of 154 $\mu\text{g}/\text{m}^3$ would not be an exceedance since it would be rounded to 150 $\mu\text{g}/\text{m}^3$; whereas, a recorded value of 155 $\mu\text{g}/\text{m}^3$ would be an exceedance since it would be rounded to 160 $\mu\text{g}/\text{m}^3$. See 40 CFR part 50, appendix K, section 1.0.

² For PM_{10} , a “complete” set of data includes a minimum of 75 percent of the scheduled PM_{10} samples per quarter. See 40 CFR part 50, appendix K, section 2.3(a).

Accordingly, EPA relies primarily on data in AQS when determining the attainment status of an area. See 40 CFR 50.6; 40 CFR part 50, appendix J and K; 40 CFR part 53; and, 40 CFR part 58, appendices A, C, D, and E. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided those stations meet the Federal monitoring requirements for SLAMS, including the quality assurance and quality control criteria in 40 CFR part 58, appendix A. See 40 CFR 58.14 (2006) and 58.20 (2007);³ 71 FR 61236, 61242 (October 17, 2006). All valid data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix K.

Attainment of the 24-hour PM₁₀ standard is determined by calculating the expected number of exceedances of the standard in a year. The 24-hour PM₁₀ standard is attained when the expected number of exceedances averaged over a three-year period is less than or equal to one at each monitoring site within the nonattainment area. Generally, three consecutive years of complete air quality data are required to show attainment of the 24-hour PM₁₀ standard. See 40 CFR part 50 and appendix K.⁴

To demonstrate attainment of the 24-hour PM₁₀ standard at a monitoring site, the monitor must provide sufficient data to perform the required calculations in 40 CFR part 50, appendix K. The amount of data required varies with the sampling frequency, data capture rate, and the number of years of record. In all cases, three years of representative monitoring data that meet the 75 percent criterion discussed earlier should be utilized, if available. More than three years may be considered, if all additional representative years of data meeting the 75 percent criterion are utilized. Data not meeting these criteria may also suffice to show attainment; however, such

³ EPA promulgated amendments to the ambient air monitoring regulations in 40 CFR parts 53 and 58 on October 17, 2006. (See 71 FR 61236.) The requirements for Special Purpose Monitors were revised and moved from 40 CFR 58.14 to 40 CFR 58.20.

⁴ Because the annual PM₁₀ standard was revoked effective December 18, 2006, this document discusses only attainment of the 24-hour PM₁₀ standard. See 71 FR 61144 (October 17, 2006).

exceptions must be approved by the appropriate Regional Administrator in accordance with EPA guidance. See 40 CFR part 50, appendix K, section 2.3.

III. EPA's Analysis

A. What is the Ogden City Nonattainment Area Monitoring Network?

The Utah Department of Environmental Quality (UDEQ) has operated PM₁₀ monitors in Ogden City since 1987. The first monitor in Ogden City was operated by the Ogden Health Department at 2570 Grant Avenue until February 15, 2000. The monitor was replaced by the Ogden Number 2 monitoring site at 228 32nd Street, which began operation on July 2, 2001. Both sites were selected to read maximum concentration values near the center of the Ogden City urbanized area.

B. Does the Ogden City Nonattainment Area Monitor Meet Minimum Federal Ambient Air Quality Monitoring Requirements?

Annually, UDEQ submits monitoring network plan reports to EPA on compliance with the applicable reporting requirements in 40 CFR 58.10. These reports discuss the status of the air monitoring network, as required under 40 CFR part 58. With respect to PM₁₀, UDEQ's annual network plans meet the applicable requirements under 40 CFR part 58. The Ogden Number 2 monitor samples on a daily schedule, which meets the requirements of 40 CFR 58.12(e) for monitoring frequency. Also, UDEQ annually certifies that the data it submits to AQS are quality-assured.

C. What Does the Air Quality Data Show for the Ogden City Nonattainment Area?

Since 1995, when Ogden City was designated as a nonattainment area, the data from AQS indicate that six exceedances of the PM₁₀ standard have been measured in the Ogden City nonattainment area at the Ogden Number 2 monitor. From the six total exceedances, one was

observed in 2002, two were in 2003, one was in 2009, and two were in 2010. All these exceedances have been flagged by UDEQ as exceptional events involving either July 4th fireworks, high winds, or wildfires. These exceedances resulted in expected numbers of exceedances of 1.0 for the period 2001 through 2003, 2002 through 2004, 2008 through 2010, and 2009 through 2011, showing that the Ogden City nonattainment area has attained the PM₁₀ NAAQS in all years containing complete monitoring data from 1995 to present. The available data shows attainment of the PM₁₀ standard continuously since 2002, even if EPA takes no action to exclude data flagged as exceptional events.

Between 1995 and 2011, an interruption of monitoring occurred between February 16, 2000 until July 2, 2001. This prevented EPA from determining that Ogden had attained the NAAQS via a clean data determination until 3 years of complete monitoring data had been collected after 2001. Beginning in 2002, complete data showing attainment of the PM₁₀ standard has been collected in AQS for the Ogden City PM₁₀ nonattainment area.

For the purposes of this proposed action, we have reviewed the data for the most recent three-year period (2009 through 2011). Table 1 summarizes the PM₁₀ concentration data collected at the Ogden Number 2 monitor over the past three years. As shown in Table 1, three exceedances, but no violations, were recorded within the Ogden City nonattainment area over the 2009 through 2011 period.

Table 1: Summary of 2009-2011 PM₁₀ Monitoring Data for Ogden City Nonattainment Area^a

Monitoring Site	Highest 24-hour PM ₁₀ Concentration (µg/m ³)			Expected Exceedances Per Year
	2009	2010	2011	2009-2011
Ogden No. 2	181	216	79	1.0
PM ₁₀ NAAQS = 150 µg/m ³ .				

^a Source: AQS AMP350 report dated June 8, 2012.

Table 2 expands on Table 1's expected exceedance per year for Ogden City's PM₁₀ monitor for years 2009 through 2011. For the years 2009 and 2010, there were three exceedances that were flagged as exceptional events. However, even though there were exceedances within these two years, the Ogden City monitor did not violate the PM₁₀ NAAQS.

Table 2. Summary of Ogden City's PM₁₀ Monitor Data (49-057-0002), 2009-2011 Expected Exceedances per Year.

Year	Monitor 49-057-0002
2009	1.0 (Wildfire Exceptional Event Flag)
2010	2.0 (High Wind Exceptional Event Flag)
2011	0.0
2009-2011 Three Year Average	1.0

During the 2009 through 2011 time period, the data collected by UDEQ meets the completeness criterion for all quarters at the Ogden Number 2 monitor. As noted above, to be considered "complete," valid measurements must be made for 75 percent of all the scheduled sampling dates in each quarter of the year, and generally, three years of representative monitoring data that meets the 75 percent criterion should be utilized, where available.

Based on our review of the certified, quality-assured data for 2009 through 2011, we find that the expected number of exceedances per year for the Ogden City nonattainment area for the most recent three-year period (i.e., 2009 to 2011) was 1.0 day per year. With an annual expected exceedance rate for the 24-hour PM₁₀ NAAQS of 1.0, these data show attainment of the PM₁₀ standard. The EPA proposes to determine that the Ogden City nonattainment area is attaining the PM₁₀ NAAQS. Prior to taking final action on this proposal, we will review any preliminary data for 2012 submitted by UDEQ to AQS for the Ogden City nonattainment area to ensure that such preliminary data show continued attainment of the standard.

IV. EPA's Clean Data Policy and the Applicability of the Clean Air Act Planning

Requirements to the Ogden City Nonattainment Area

The air quality planning requirements for moderate PM₁₀ nonattainment areas, such as the Ogden City nonattainment area, are set out in part D, subparts 1 and 4, of title I of the Act. EPA has issued guidance in a General Preamble describing how we will review state implementation plans (SIPs) and SIP revisions submitted under title I of the Act, including those containing moderate PM₁₀ nonattainment area SIP provisions.⁵

The subpart 1 requirements include, among other things, provisions for reasonably available control measures or “RACM”, reasonable further progress or “RFP”, emissions inventories, a permit program for construction and operation of new or modified major stationary sources in the nonattainment area or “NSR”, contingency measures, conformity, and additional SIP revisions providing for attainment where EPA determines that the area has failed to attain the standard by the applicable attainment date.

Subpart 4 requirements in CAA section 189 apply specifically to PM₁₀ nonattainment areas. The requirements for moderate PM₁₀ nonattainment areas include: (1) an attainment demonstration; (2) provisions for RACM; (3) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date; and, (4) provisions ensuring that the control requirements applicable to an area's major stationary sources of PM₁₀ also apply to major stationary sources of PM₁₀ precursors, except where the Administrator has determined that such sources do not contribute significantly to PM₁₀ levels exceeding the NAAQS.

For nonattainment areas where EPA determines that monitored data show that the NAAQS have already been achieved, EPA's interpretation, upheld by the Courts, is that the

⁵ “General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” (57 FR 13498 (April 16, 1992), and supplemented at 57 FR 18070 (April 28, 1992)); hereafter referred to as the General Preamble.

obligation to submit certain requirements of part D, subparts 1, 2, and 4 of the Act are suspended for so long as the area continues to attain. These include requirements for attainment demonstrations, RFP, RACM, and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS. Certain other obligations for PM₁₀ nonattainment areas, however, are not suspended, such as the NSR requirements.

This interpretation of the CAA is known as the Clean Data Policy. It is the subject of several EPA memoranda and regulations, and numerous rulemakings that have been published in the Federal Register over more than fifteen years. EPA finalized the statutory interpretation set forth in the Clean Data Policy as part of its “Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard--Phase 2” (Phase 2 Final Rule); see 40 CFR 51.918 and discussion in the preamble to the rule at 70 FR 71612, 71645-71646 (November 29, 2005). The D.C. Circuit Court upheld this Clean Data regulation as a valid interpretation of the CAA; see *NRDC v. EPA*, 571 F. 3d 1245 (D.C. Cir. 2009). EPA also finalized its interpretation in an implementation rule for the NAAQS for particulate matter of 2.5 microns or less (PM_{2.5}); see 40 CFR 51.1004(c). Thus, EPA has codified the Clean Data Policy when it established final rules governing implementation of new or revised NAAQS. See 70 FR 71612, 71644-46 (November 29, 2005); 72 FR 20586, 20665 (April 25, 2007) (PM_{2.5} Implementation Rule). Otherwise, EPA applies the Clean Data Policy in individual rulemakings related to specific nonattainment areas. See, e.g., 75 FR 27944 (May 19, 2010), the determination of attainment of the PM₁₀ standard in Coso Junction, California, and 75 FR 6571 (February 10, 2010), the determination of attainment of the 1-hour ozone standard in Baton Rouge, Louisiana.

In its many applications of the Clean Data Policy interpretation to PM₁₀, EPA has explained that the legal bases set forth in detail in our Phase 2 Final Rule; our May 10, 1995

memorandum from John S. Seitz, entitled “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard;” our PM_{2.5} Implementation Rule; and our December 14, 2004 memorandum from Stephen D. Page entitled “Clean Data Policy for the Fine Particle National Ambient Air Quality Standards,” are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM₁₀. See, e.g., 71 FR 6352 (February 8, 2006) (Ajo, Arizona area); 71 FR 13021 (March 14, 2006) (Yuma, Arizona area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia area); 71 FR 44920 (August 8, 2006) (Rillito, Arizona area); 71 FR 63642 (October 30, 2006) (San Joaquin Valley, California area); 72 FR 14422 (March 28, 2007) (Miami, Arizona area); 75 FR 27944 (May 19, 2010) (Coso Junction, California area); and 76 FR 21807 (April 19, 2011) (Truckee Meadows, Nevada area). EPA’s interpretation that the obligation to submit an attainment demonstration, RACM, RFP, contingency measures, and other measures related to attainment under part D of title I of the CAA is suspended while the area is attaining the NAAQS, applies whether the standard is PM₁₀, ozone, or PM_{2.5}.

In EPA’s proposed and final rulemakings determining that the San Joaquin Valley nonattainment area attained the PM₁₀ standard, EPA set forth at length its rationale for applying the Clean Data Policy to PM₁₀. The Ninth Circuit Court subsequently upheld this rulemaking, and specifically EPA’s Clean Data Policy, in the context of the PM₁₀ standard. See *Latino Issues Forum v. EPA*, Nos. 06-75831 and 08-71238 (9th Cir.), Memorandum Opinion, March 2, 2009. In rejecting petitioner’s challenge to the Clean Data Policy for PM₁₀, the Court stated:

As the EPA rationally explained, if an area is in compliance with PM₁₀ standards, then further progress for the purpose of ensuring attainment is not necessary.

EPA noted in its prior PM₁₀ rulemakings that the reasons for relieving an area that has attained the relevant standard of certain obligations under part D, subparts 1 and 2, apply equally to part D, subpart 4, which contains specific attainment demonstration and RFP provisions for PM₁₀ nonattainment areas. In EPA's Phase 2 Final Rule and ozone (Seitz) and PM_{2.5} Clean Data (Page) memoranda, EPA established that it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with related requirements, so as not to require SIP submissions if an area subject to those requirements is already attaining the NAAQS (i.e., attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured, and certified air quality monitoring data). Every U.S. Circuit Court of Appeals that has considered the Clean Data Policy has upheld EPA rulemakings applying its interpretation, for both ozone and PM₁₀. See *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, No. 04-73032 (9th Cir. June 28, 2005) (memorandum opinion), *Latino Issues Forum*, *supra*.

It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS. In the General Preamble, we stated:

[R]equirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

See 57 FR 13564 (April 16, 1992). EPA's prior determinations of attainment for PM₁₀, *e.g.*, for the San Joaquin Valley and Coso Junction areas in California, make clear that the same

reasoning applies to the PM₁₀ provisions of part D, subpart 4. See 71 FR 40952 and 71 FR 63642 (proposed and final determination of attainment for San Joaquin Valley) and 75 FR 13710 and 75 FR 27944 (proposed and final determination of attainment for Coso Junction).

With respect to RFP, section 171(1) states that, for purposes of part D of title I, RFP “means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.” Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), or the specific RFP requirements for PM₁₀ areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date. Section 189(c)(1) states that:

Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the applicable date.

Although this section states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show reasonable further progress “toward attainment by the applicable attainment date,” as defined by section 171. Thus, it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates that a State that fails to achieve a milestone must submit a plan that assures that the State will achieve the next milestone or attain the NAAQS if there is no next milestone.

Section 189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

In the General Preamble, we noted with respect to section 189(c) that the purpose of the milestone requirement “is ‘to provide for emission reductions adequate to achieve the standards by the applicable attainment date’ (H.R. Rep. No. 490, 101st Cong., 2d Sess. 267 (1990)).” See 57 FR 13539 (April 16, 1992). If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.⁶ EPA took this position with respect to the general RFP requirement of section 172(c)(2) in the General Preamble and also in the Seitz memorandum with respect to the requirements of sections 182(b) and (c). In our prior applications of the Clean Data Policy to PM₁₀, we have extended that interpretation to the specific provisions of part D, subpart 4. See, e.g., 71 FR 40952 and 71 FR 63642, the proposed and final determination of attainment for San Joaquin Valley, and 75 FR 13710 and 75 FR 27944, the proposed and final determination of attainment for Coso Junction.

In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the “requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no

⁶ Thus, we believe that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is “redesignated attainment,” as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2), which refer to the RFP requirements as applying until the “attainment date,” since section 189(c)(1) defines RFP by reference to section 171(1) of the Act. Reference to section 171(1) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific requirements may only be required “for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.” 42 U.S.C. section 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(1), and incorporated in section 189(c)(1), to be a requirement that no longer applies once the standard has been attained.

meaning at that point.” See 57 FR 13564 (April 16, 1992). See also our September 4, 1992 memorandum from John Calcagni, entitled “Procedures for Processing Requests to Redesignate Areas to Attainment” (Calcagni memorandum), at page 6.

Similarly, the requirements of section 189(c)(2) with respect to milestones no longer apply so long as an area has attained the standard. Section 189(c)(2) provides in relevant part that:

Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration * * * that the milestone has been met.

Where the area has attained the standard and there are no further milestones, there is no further requirement to make a submission showing that such milestones have been met. As noted above, this is consistent with the position that EPA took with respect to the general RFP requirement of section 172(c)(2) in the General Preamble and also in the Seitz memorandum with respect to the requirements of section 182(b) and (c). In the Seitz memorandum, EPA also noted that section 182(g), the milestone requirement of subpart 2, which is analogous to provisions in section 189(c), is suspended upon a determination that an area has attained. The Seitz memorandum, also citing additional provisions related to attainment demonstration and RFP requirements, stated:

Inasmuch as each of these requirements is linked with the attainment demonstration or RFP requirements of section 182(b)(1) or 182(c)(2), if an area is not subject to the requirement to submit the underlying attainment demonstration or RFP plan, it need not submit the related SIP submission either.

See Seitz memorandum at page 5.

With respect to the attainment demonstration requirements of section 189(a)(1)(B), an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for “a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date * * *.” As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, the Page memorandum, and the section 182(b) and (c) requirements set forth in the Seitz memorandum. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since “attainment will have been reached.” See 57 FR at 13564 (April 16, 1992).

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of sections 172(c)(9) and 182(c)(9). We have interpreted the contingency measure requirements of sections 172(c)(9) and 182(c)(9) as no longer applying when an area has attained the standard because those “contingency measures are directed at ensuring RFP and attainment by the applicable date.” See 57 FR 13564 (April 16, 1992) and Seitz memorandum, pages 5-6.

Both sections 172(c)(1) and 189(a)(1)(C) require “provisions to assure that reasonably available control measures” (i.e., RACM) are implemented in a nonattainment area. The General Preamble states that EPA interprets section 172(c)(1) so that RACM requirements are a “component” of an area's attainment demonstration. See 57 FR 13560 (April 16, 1992). Thus, for the same reason the attainment demonstration no longer applies by its own terms, the

requirement for RACM no longer applies. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable further progress or to attainment. See the General Preamble at 57 FR 13498 (April 16, 1992). Thus, where an area is already attaining the standard, no additional RACM measures are required.⁷ EPA is interpreting section 189(a)(1)(C) consistent with its interpretation of section 172(c)(1).

We emphasize that the suspension of the obligation to submit SIP revisions concerning these RFP, attainment demonstration, RACM, and other related requirements exists only for as long as the Ogden City nonattainment area continues to monitor attainment of the PM₁₀ standard. If EPA determines, after notice-and-comment rulemaking, that the area has monitored a violation of the PM₁₀ NAAQS, the basis for suspending the requirements would no longer exist. As a result, the Ogden City nonattainment area would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a final determination that the area need not submit one of the pertinent SIP submittals amounts to no more than a suspension of the requirements for so long as the area continues to attain the standard. Only after EPA redesignates the area to attainment would the area be relieved of these attainment-related submission obligations. Attainment determinations under the Clean Data Policy do not suspend an area's obligations unrelated to attainment in the area, such as provisions to address pollution transport.

Based on our proposed determination that the Ogden City nonattainment area is currently attaining the PM₁₀ NAAQS (*see* section III.C above) and as set forth above, we propose to find

⁷ The EPA's interpretation that the statute only requires implementation of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. EPA*, 314 F.3d 735, 743-745 (5th Cir. 2002)), and by the United States Court of Appeals for the D.C. Circuit (*Sierra Club v. EPA*, 294 F.3d 155, 162-163 (D.C. Cir. 2002)).

that Utah's obligations to submit planning provisions to meet the requirements for an attainment demonstration, reasonable further progress plans, reasonably available control measures, and contingency measures, no longer apply for so long as the Ogden City nonattainment area continues to monitor attainment of the PM₁₀ NAAQS. In the future, after notice-and-comment rulemaking, if EPA determines that the area again violates the PM₁₀ NAAQS, then the basis for suspending the attainment demonstration, RFP, RACM, and contingency measure requirements would no longer exist. In that event, we would notify Utah that we have determined that the Ogden City nonattainment area is no longer attaining the PM₁₀ standard and provide notice to the public in the Federal Register.

V. EPA's Proposed Action

Based on the most recent three-year period of certified, quality-assured data meeting the requirements of 40 CFR part 50, appendix K, and for the reasons discussed above, we propose to find that the Ogden City nonattainment area is currently attaining the 24-hour PM₁₀ NAAQS.

In conjunction with and based upon our proposed determination that the Ogden City nonattainment area is currently attaining the standard, EPA proposes to determine that Utah's obligation to submit the following CAA requirements is not applicable for so long as the Ogden City nonattainment area continues to attain the PM₁₀ standard: an attainment demonstration under CAA section 189(a)(1)(B); RACM provisions under CAA section 189(a)(1)(C); RFP provisions under CAA section 189(c); and, the attainment demonstration, RACM, RFP and contingency measure provisions under CAA section 172 of the Act.

Any final action resulting from this proposal would not constitute a redesignation to attainment under CAA section 107(d)(3) because we have neither received nor approved a maintenance plan for the Ogden City nonattainment area as meeting the requirements of section

175A of the CAA, nor have we determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 would remain moderate nonattainment for the Ogden City nonattainment area until such time as EPA determines that Utah has met the CAA requirements for redesignating the Ogden City nonattainment area to attainment.

VI. Statutory and Executive Order Reviews

With this action, we propose to make a determination regarding attainment of the PM₁₀ NAAQS based on air quality data and, if finalized, this proposed action would result in suspension of certain Federal requirements, and would not impose additional requirements beyond those imposed by State law or by the CAA. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249; November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 10, 2012.

Howard Cantor,
Acting Regional Administrator,
Region 8.

[FR Doc. 2012-18389 Filed 07/27/2012 at 8:45 am; Publication Date: 07/30/2012]